

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit	: 1617	Customer No.: 035811
Examiner	: Gina C. Yu	
Serial No.	: 10/785,237	
Filed	: February 24, 2004	
Inventors	: Yves Millou	Docket No.: 1026-04
	: Katia Fontes	
	: Cécile Tourel	Confirmation No.: 1050
Title	: COSMETIC COMPOSITION COMPRISING	
	: AN ESSENTIAL OIL EXTRACTED FROM	
	: HELICHRYSUM ITALICUM	

Dated: April 9, 2008

RESPONSE

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is in response to the Official Action mailed October 12, 2007, Claims 1-3, 5-8, 10 and 14-24 are pending. Claims 1-3, 5-8, 10 and 14-24 are rejected.

Claims 1-4, 8, 14-16, 20 and 22-24 are rejected under 35 U.S.C. §102(b) as anticipated by Amrita. The rejection states that Amrita teaches an essential oil of *Helichrysum italicum* distilled from the flowers of this plant, that this essential oil is added to skin care products and that the claimed methods are inherently practiced every time the skin care products comprising the essential oil of Amrita are used. The rejection states that the essential oil of Amrita inherently anticipates the compositions and methods claimed.

Claims 1-4, 8, 14-16, 20 and 22-24 are not expressly, or inherently, anticipated under 35 U.S.C. §102(b) by Amrita. First, Amrita is silent as to the neryl acetate content of the essential oil compositions offered for sale. Second, the Applicants have enclosed with this response evidence showing that the essential oil compositions sold by Amrita are different than the claimed compositions comprising “[an] essential oil compris[ing] about 40 to about 70% neryl acetate by weight.” These enclosed data show that the essential oil compositions of Amrita contain no more than 35.57% neryl acetate as assessed using GC/MS chromatography methods. In particular, the analyses show that a first sample of the Amrita essential oil composition

contains only 9.53% neryl acetate, and that a second sample of the Amrita composition contains only 35.57% neryl acetate. *See Sample 1 GC-MS Chromatograph, Sample 1 GC-MS Analytical Report, Sample 2 GC-MS Chromatograph, and Sample 2 GC-MS Analytical Report.* In light of this evidence, it is clear that the essential oil compositions of Amrita are distinct from the claimed compositions and methods which require that “the essential oil comprises about 40 to about 70% neryl acetate by weight.” This means that Amrita fails to expressly or inherently teach all the elements of the claimed essential oil compositions and the related methods using these compositions. The Applicants respectfully request withdrawal of the rejections of Claims 1-4, 8, 14-16, 20 and 22-24 as being anticipated under 35 U.S.C. §102(b) by Amrita.

Claims 5, 6, 17 and 18 are rejected under 35 U.S.C. §103(a) as being obvious over the combination of Amrita and Spina. The rejection states that the teachings of Amrita are essentially as described above. The rejection states that Spina discloses topical compositions comprising 30 g *Helichrysum italicum* essential oil that are alleged to be equivalent to 3.7 to 4.3% by weight. The rejection also states that one of ordinary skill in the art would be motivated to combine the teachings of Amrita and Spina to make the claimed compositions or perform the claimed methods and would enjoy a reasonable expectation of success on doing so. Importantly, the rejection attempts to establish *prima facie* obviousness, instead of an alternative rationale supporting the conclusion of obviousness.

Claims 5, 6, 17 and 18 are not obvious under 35 U.S.C. §103(a) over the combination of Amrita and Spina. As discussed above, Amrita does not disclose essential oils comprising 40 to 70% neryl acetate by weight. The teachings of Spina do not correct the deficiencies of Amrita. Consequently, the combination of Amrita and Spina does not teach all the elements of Claims 5, 6, 17 and 18 and one or ordinary skill in the art would be unable to successfully combine the teachings of these references. In other words, the rejection fails to establish *prima facie* obviousness. The Applicants respectfully request withdrawal of the rejections of Claims 5, 16, 17 and 18 under 35 U.S.C. §103(a) as obvious over the combination of Amrita and Spina.

Claims 7, 10, 19 and 21 are rejected under 35 U.S.C. §103(a) as obvious over the combination of Amrita and Afriat. The rejection states that the teachings of Amrita are essentially as described above. The rejection states that Afriat teaches cosmetic compositions comprising essential oils and vitamin E incorporated into nanospheres. The rejection also states that one of ordinary skill in the art would be motivated to combine the teachings of Amrita and Afriat to make the claimed compositions or perform the claimed methods and would enjoy a

reasonable expectation of success on doing so. Importantly, the rejection attempts to establish *prima facie* obviousness, instead of an alternative rationale supporting the conclusion of obviousness.

Claims 7, 10, 19 and 21 are not obvious under 35 U.S.C. §103(a) over the combination of Amrita and Afriat. As discussed above, Amrita does not teach the claimed essential oil compositions. The teachings of Afriat fail to correct the deficiencies of Amrita. Consequently, the combination of Amrita and Afriat does not teach all the elements of Claims 7, 10, 19 and 21 and one or ordinary skill in the art would be unable to successfully combine the teachings of these references. In other words, the rejection fails to establish *prima facie* obviousness. The Applicants respectfully request withdrawal of the rejections of Claims 7, 10, 19 and 21 under 35 U.S.C. §103(a) as obvious over the combination of Amrita and Afriat.

In light of the foregoing, the Applicants respectfully submit that the entire Application is now in condition for allowance, which is respectfully requested.

Respectfully submitted,



T. Daniel Christenbury
Reg. No. 31,750
Attorney for Applicants

TDC/WLP/rb
(215) 656-3381